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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/596,081	06/16/2000	Michael F. Brice	11047.100	2958

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EXAMINER	
GRAHAM, GARY K	
ART UNIT	PAPER NUMBER

1744

DATE MAILED: 04/19/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/596,081

Applicant(s)

BRICE, MICHAEL F.

Examiner

Gary K Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period of Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rectangular shaped resilient thumb contact structure must be shown or the feature(s) canceled from the claim(s). The thumb contact structure is only disclosed as oval. The rectangular base of the rubber insert does not appear to be the thumb contact structure. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no original disclosure of the thumb contact structure as including a rectangular-shaped thumb contact structure. The thumb contact structure of the insert only appears to be disclosed as oval. While a base of the insert is disclosed as rectangular such is not considered to be the thumb contact structure of such insert. Clarification is requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brice '421 in view of Lamond et al '510.

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The patent to Brice discloses the invention substantially as is claimed. Note figure 10 which shows a toothbrush including an elongated handle (61) shaped and dimensioned to be grasped by a user, a first and second necks (64L,64R) extending parallel from an end of the handle and said necks supporting first and second bristle supports or heads (66,67) at distal ends thereof. A plurality of first and second bristles extend from the respective heads. Said first and second bristles extend in the same direction and are substantially parallel to one another.

With respect to claim 5, the first and second bristles of the Brice patent will have a first stiffness, as far as defined.

The patent to Brice discloses all of the above recited subject matter with the exception of the handle having an oval-shaped cavity therein with an oval-shaped resilient thumb contact inserted therein.

The patent to Lamond discloses a toothbrush (fig.1) including a handle (4) with an oval-shaped cavity (24) therein and an oval-shaped resilient pad (20) inserted into said cavity. Resilient pads, as disclosed by Lamond, are known to be provided with toothbrush handles to increase the grip of the user.

It would have been obvious to one of skill in the art to provide the handle of Brice with a cavity and a resilient pad therein, as clearly suggested by Lamond, to increase the grip of the user of such toothbrush.

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Claims 2-5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brice '421 in view of Desimone et al '482.

The patent to Brice discloses all of the above recited subject matter with the exception of the handle having a rectangular-shaped cavity therein with a rectangular-shaped resilient thumb contact inserted therein.

The patent to Desimone discloses a toothbrush (figs.1,4) including a handle (16) with a rectangular-shaped cavities (38,40) therein and rectangular-shaped resilient pads (24,26) inserted into said cavities. Resilient pads, as disclosed by Desimone, are known to be provided with toothbrush handles to increase the grip of the user.

It would have been obvious to one of skill in the art to provide the handle of Brice with cavities and resilient rectangular-shaped pads therein, as clearly suggested by Desimone, to increase the grip of the user of such toothbrush.

Response to Arguments

Applicant's arguments filed 07 March 2002 have been fully considered but they are not persuasive. The thrust of applicant's argument appears to be that the teachings of Lamond, and assumably Desimone, cannot be combined with the teachings of Brice since Lamond discloses a single brush head and Brice discloses a dual brush head. Such is not persuasive. Whether or not Lamond discloses the use of a single brush head in no way prohibits or makes improper employing the resilient thumb structure taught by Lamond in the brush of Brice. Lamond and

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Desimone both teach the use of resilient thumb structures in toothbrush handles to facilitate use of the toothbrush when being grasp. Such a teaching can readily be employed in the Brice toothbrush. The examiner is not relying on Lamond or Desimone to teach the dual head concept. Such is already present in the Brice toothbrush. Applicant states that the teachings of Brice and Lamond would be destroyed if combined. Such is not understood. It is unclear how providing a resilient thumb pad, as clearly suggested by Lamond and Desimone, on the Brice toothbrush would destroy the Brice toothbrush. It should be noted that the examiner is not suggesting that the Brice toothbrush be made to have a removable head. Only that the Brice toothbrush be provided with a resilient pad.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 703-308-1270. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7719 for regular communications and 703-305-7719 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-7719.


GARY K. GRAHAM
REGISTERED EXAMINER
0900 1700

GKG

April 17, 2002